

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 14a0228n.06

Case No. 11-3718

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 26, 2014
DEBORAH S. HUNT, Clerk

OWNERS INSURANCE COMPANY,)
)
Plaintiff-Appellant,)
)
v.)
)
JOHN BARONE, II,)
)
Defendant-Appellee.)
)
)

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF OHIO

OPINION

BEFORE: DAUGHTREY, COLE, and WHITE, Circuit Judges.

PER CURIAM. Owners Insurance Company appeals an order granting a partial motion for summary judgment in favor of John Barone, II. Barone holds a homeowners insurance policy issued by Owners. The policy was in place in June 2008, when Barone had a new Mastercraft speedboat, a wakeboard, and other accessories delivered to his Florida home. The next month, Jessica Merritt was injured while riding the wakeboard as Barone drove the boat. Merritt brought suit against Barone alleging that her injuries were attributable in part to his negligence. Shortly after that, Barone informed Owners of the new boat and of the accident. Owners began defending Barone in Merritt’s suit under a reservation of right, but the company brought its own suit asking the district court to declare that it had no duty to defend Barone under

Case No. 11-3718
Owners Ins. Co. v. Barone

the insurance policy. Owners and Barone filed cross-motions for summary judgment. The court found that the policy entitled Barone to a defense in Merritt's suit, and we affirm.

We review a district court's grant of summary judgment *de novo*. *Tysinger v. Police Dep't of City of Zanesville*, 463 F.3d 569, 572 (6th Cir. 2006). A motion for summary judgment should be granted if the movant demonstrates that there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. *Id.*; Fed. R. Civ. P. 56(a). We view the facts and draw all inferences in the light most favorable to the non-moving party. *McKinnie v. Roadway Express, Inc.*, 341 F.3d 554, 557 (6th Cir. 2003) (citing *Matsushita Elec. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). To establish a genuine dispute of fact for trial, the non-moving party must point to evidence on the record upon which a reasonable finder of fact could find in its favor. *Id.*

Under Ohio law, ambiguous contract terms are "construed strictly against the insurer and liberally in favor of the insured." *King v. Nationwide Ins. Co.*, 519 N.E.2d 1380, 1383 (Ohio 1988). The district court found the insurance policy language ambiguous with regard to whether the wakeboard was covered and therefore interpreted the policy in Barone's favor. The court then held that Owners has a duty to defend Barone from all of Merritt's claims arising out of the accident, and that Owners must indemnify Barone for any damages arising from the use and defectiveness of the wakeboard.

Because the persuasive reasoning that supports this decision has been clearly and thoroughly articulated by the district court in its opinion, a detailed written opinion from this court would be unnecessarily duplicative. We affirm the Memorandum Opinion issued on June 6, 2011, on the basis of the reasoning contained therein.